

Book Review

Visa A. J. Kurki and Tomasz Pietrzykowski (Eds.) Legal Personhood: Animals, Artificial Intelligence and the Unborn

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Abstract

It is in a possible future reconstruction of the notion of legal personhood that the key to better protection for animals may lie. At least, this is the belief of those who seek to expand the current understanding of personhood to encompass animals. It is in essence of this agenda, therefore, that the collection of critical essays compiled by editors Visa A. J. Kurki and Tomasz Pietrzykowski, provide compelling deconstruction of its current legal conceptualisation and careful critique of its unsatisfactory reflection of modern philosophical thought relating to animals, artificial intelligence and the unborn, and provide some fundamental groundwork and, by extension, a great step forward, for a favourable reconceptualization of legal personhood.

Keywords: animals, legal rights philosophy, personhood, non-legal person, Great Ape Project, Steven Wise

Resumen

La clave para una mejor protección de los animales puede estar en una posible reconstrucción futura de la noción de personalidad jurídica. Al menos, esto es lo que creen aquellos que buscan expandir la comprensión actual de la personalidad para incluir a los animales. Es en esencia de este orden del día, por lo tanto, que la colección de ensayos críticos compilados por los editores Visa A. J. Kurki y Tomasz Pietrzykowski proporcionan una deconstrucción convincente de su conceptualización jurídica actual y una crítica cuidadosa de su reflejo insatisfactorio del pensamiento filosófico moderno en relación con los animales, la inteligencia artificial y el no nacido, y proporcionan algunos fundamentos básicos y, por extensión, un gran paso adelante, para una reconceptualización favorable de la personalidad jurídica.

Palabras clave: animales, filosofía de los derechos jurídicos, personalidad, persona no legal, Great Ape Project, Steven Wise.

This work - a collection of ten independent chapters – aims to, in the words of its editor, “problematize the assumptions that underlie the Western legal doctrines of personhood”¹ and “suggest ways in which our theoretical categories could be built on firmer ground”.² This is, for any reader, I believe, a tempting invitation to explore the suggestions presented in the following chapters; careful, cautious and concentrated, the pieces within present critical analysis through cogent and constructive reasoning, successfully convincing any reader of the need for greater critical scrutiny in this key area; for this is, after all, a key area, and this work is, indeed, of great contemporary relevance. As highlighted in the book itself, “there are many well-known attempts to prompt legal authorities to confer on animals the status of non-human persons”,³ including efforts undertaken by Steven Wise’s Great Ape Project,⁴ and even notable success in the 2014 Argentinian case that ruled an orang-utan in a Buenos Aires zoo to be legally regarded as a non-human person “based on a dynamic rather than a static interpretation of the law”.⁵

The critical strength is evident in the way that, collaboratively, the components of this book provide strong challenge to personhood from multiple angles; Bartosz Brozek, for example, examines the historical, psychological, bioethical, philosophical, ethical and theological development of the term before advising his methodological rule of caution to the reader: “when utilising the concept of the person, one needs to bear in mind its many dimensions, both philosophical and legal”.⁶ Very well placed as an opening chapter, this enlightening exploration effectively sets out certain intricacies and understandings of the notion of personhood, but more importantly demonstrates exactly why the notion is so vulnerable under scrutiny and thus, as the book states, exposed to alternative understanding.

Three chapters within Section Two of the book, entitled *Persons, Animals and Machines*, deal specifically with the question of personhood in relation to animals. In his article entitled “The Idea of Non-Personal Subjects of Law”, Polish lawyer and Doctor of Law Tomasz Pietrzykowski attempts to “take a step forward in reframing the conceptual basis of the discussion of the status of animals and some other creatures”.⁷ Disproving the illusion of juridical humanism being, in its present form, “an eternal and the only possible foundation of legal systems”,⁸ and disregarding “its current shape as a kind of ultimate end of a long evolution in which the proper account of personhood in law has finally been found out”,⁹ and instead revealing signs of its “ever deepening crisis”,¹⁰ he puts forward compelling reasoning for the need to reconsider “the dualistic divide of the world into persons and things”,¹¹ which is, he convinces us, “far too crude to adequately respond to the present and future ethical challenges”.¹² The concept of “non-personal subjects” that he proposes is a solution that entails, he argues, “important advantages in comparison with the current

¹ Visa A. J.; Pietrzykowski, Tomasz, “Legal Personhood: Animals, Artificial Intelligence and the Unborn”, (Springer International Publishing, 2017), *The Law and Philosophy Library*, Volume 119, ix

² *ibid.* ix

³ *ibid.* 56

⁴ *ibid.* 56

⁵ *ibid.* 56

⁶ Brozek, Bartosz, “The Troublesome ‘Person’”, in Kurki, Visa A. J.; Pietrzykowski, Tomasz, “Legal Personhood: Animals, Artificial Intelligence and the Unborn”, (Springer International Publishing, 2017), *The Law and Philosophy Library*, Volume 119, 19

⁷ Pietrzykowski, Tomasz, “The Idea of Non-Personal Subjects of Law”, in Brozek, Bartosz, “The Troublesome ‘Person’”, in Kurki, Visa A. J.; Pietrzykowski, Tomasz, “Legal Personhood: Animals, Artificial Intelligence and the Unborn”, (Springer International Publishing, 2017), *The Law and Philosophy Library*, Volume 119, 65

⁸ *ibid.* 50

⁹ *ibid.* 50

¹⁰ *ibid.* 50

¹¹ *ibid.* 71

¹² *ibid.* 71

situation”,¹³ while remaining realistic enough to avoid what he terms “the trap of empty radicalism”.¹⁴

Visa A. J. Kurki, in his article “Why Things Can Hold Rights: Reconceptualising the Legal Person”, successfully draws attention to the confusion generated by the equation of legal personhood with the holding of rights, and the inadequacy of this theory to “properly explain and structure the various ongoing debates that are, in some way or another, linked to the concept of legal personality”.¹⁵ By testing the legal-persons-as-rights-holders view against three theories of rights – the “anything-beneficial” theory, interest theory, and will theory), he provides evidence for his claim that legal personhood cannot be reduced to right-holding or duty-bearing, so as to ultimately support his claim that “the legal-persons-as-rights-holders view, paradigmatic as it is, can indeed be questioned”,¹⁶ and enjoy greater freedom of speculation conferred by “such disentangling of right-holding from legal personhood”.¹⁷

In his piece “Animals’ Race Against the Machine”, author Rafal Michalczak explores the post humanist movement within ethical investigations in terms of the expansion of the ethical circle in reaction to increased ecocentric or infocentric concern. Presenting an argument for his belief that “software agents will be the first beings widely recognised as new legal subjects”¹⁸ – a point that the author argues is often fundamentally opposed by adherents of green ethics – he effectively reconciles the two positions by enlightening the reader to their similarities, uniting them under the fact that “every crack in the system would be beneficial for both points of view”.¹⁹

In addition to providing intriguing, well-reasoned and highly relevant critical analyses of our contemporary understanding of personhood, a key strength of these pieces undoubtedly lies in the way that these views are presented; they are not made out to be perfect answers to simple questions, or even answers in themselves; instead, they identify current inadequacies within understandings of personhood, and seek to, on a specific point, highlight the weaknesses and provide well-reasoned evidence that expose them. By introducing the articles in this way, and emphasising that their purpose is to stimulate critical thought, demonstrate alternate ways of understanding, expose misconceptions and find similarities where there may appear only to be contradiction, these pieces set themselves up to succeed; it is in the realism of this premise that I believe the strength of the pieces to lie.

While I have referred only to those chapters that pertain specifically to legal personhood relating to animals, and while only part of the book pertains to deals specifically with the question of animals, it must be emphasised that the work in its entirety plays a valuable role in carrying forward questions of animal personhood, status, and subjectivity. Sections One and Three of the book – “Identifying the Legal Person” and “Humanity, Personhood and Bioethics”, respectively – provide equally stimulating and compelling reasoning for a reconceptualization of the notion of personhood. All in all, by identifying the flaws in current conceptions of personhood, whether from the perspective of animal or technological ethics, dialogue is stimulated and the chance of opening the door for greater

¹³ *ibid*, 71

¹⁴ *ibid*, 71

¹⁵ Kurki, Visa A. J., “Why Things Can Hold Rights: Reconceptualising the Legal Person”, in Brozek, Bartosz, “The Troublesome ‘Person’”, in Kurki, Visa A. J; Pietrzykowski, Tomasz, “Legal Personhood: Animals, Artificial Intelligence and the Unborn”, (Springer International Publishing, 2017), *The Law and Philosophy Library*, Volume 119, 77

¹⁶ *ibid*, 75

¹⁷ *ibid*, 86

¹⁸ Michalczak, Rafal, “Animals’ Race Against the Machines”, in Brozek, Bartosz, “The Troublesome ‘Person’”, in Kurki, Visa A. J; Pietrzykowski, Tomasz, “Legal Personhood: Animals, Artificial Intelligence and the Unborn”, (Springer International Publishing, 2017), *The Law and Philosophy Library*, Volume 119, 96

¹⁹ *ibid*, 105

understanding, critical thought, and openness toward change is increased. The grouping together of fields in which criticism of personhood can be found is, therefore, beneficial in the way that expertise from each field may be shared, and a development in one may be used as a guideline for alike development in another.

Ultimately, therefore, this composition of academic works is vast in reach and great in relevance, pertaining to matters far broader than any specific animal or bioethical concerns, yet crucial to them all. It effectively identifies and exposes the weaknesses of current concepts of legal personhood, and compellingly fulfils its aim; “to problematize the assumptions that underlie the Western legal doctrines of personhood and to suggest ways in which our theoretical categories could be built on firmer ground”.²⁰

²⁰ *supra* note 1, ix